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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte BJOERN GOERKE, JENS BAUMGART, JENS ITTEL,
MARKUS CHERDRON, and STEFAN BECK

Appeal 2009-005702
Application 10/781,271
Technology Center 2100

Oral Hearing Held: January 14, 2010

Before LEE E. BARRETT, JEAN R. HOMERE, and
JAMES R. HUGHES, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANT:

WILLIAM J. BROGAN, ESQUIRE
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1 The above-entitled matter came on for hearing Thursday,
2 January 14, 2010, commencing at 1:54 p.m., at the U.S. Patent and
3 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Jack
4 Becker, a Notary Public.

5 THE USHER: Calendar No. 51, Appeal No. 2009-5702, Mr. Brogan.

6 JUDGE BARRETT: Good afternoon.

7 MR. BROGAN: Good afternoon. May it please the Board, my name
8 is Bill Brogan and I represent the Appellants, SAT. We're appealing the
9 final Rejection of the pending claims of Application 10/781,271. These
10 claims are rejected on two grounds, the first one is under Section 103, in
11 view of four references, Inanoria, Pena, Pattison, and Mahemoff, and the
12 second, which was added during the Examiner's Answer Brief, is rejection
13 under Section 101. Before I start talking about the claims, I'd like to, if it's
14 okay, briefly go through the technology of our invention.

15 JUDGE BARRETT: Sure.

16 MR. BROGAN: Do Your Honors have a copy of our Application?

17 JUDGE BARRETT: We do.

18 MR. BROGAN: If you could turn to Figure 2, what you see there is, I
19 believe it's 200, it's a view and inside the view are three user elements. And
20 one of the main points for our invention is the idea of being able to lay out a
21 view such as the one shown in Figure 2 by placing user elements into it.
22 When, when a user is laying out a view, they can do it visually and
23 interactively and arrange user elements in any way they want. And one of
24 the advantages of the invention is while they do this, they don't have to write
25 code or be a programmer to do it. Someone could just take this, graph the
26

1 user interface with the user interface of the views laid out, bring them in and
2 lay them out.

3 If you could turn quickly to Figure 3, this figure shows a user
4 interface that's been laid out a little further than the one in the previous
5 figure, and here you can see three views, view 1, view 2, and view 3, that
6 have also been laid out into a view area and with the addition of navigation
7 links such as 345 and 350 connecting them. So, again, here a user gets to lay
8 out what he wants the user interface to look like by taking views he's built
9 before that include user interface elements, putting them together in the
10 order he wants, and using these navigation links that actually specify how
11 the views are going to interact with each other, how they're going to
12 transition from one to the other, for example. Now, again, one of the big
13 advantages here is you don't have to write code to do this. You can take the
14 views that you've created, lay them out, interconnect them with the
15 navigation links, and build the user interface for an application later on down
16 the road.

17 JUDGE BARRETT: You don't describe any way of doing that,
18 though, right? You just describe that that's what you do and you don't
19 describe how you do it without code, any algorithms for doing it, or any
20 programming for doing it. It's just there, there it is on the view area?

21 MR. BROGAN: Yeah, I mean I sort of disagree that there's no
22 description of others. There's flow charts that kind of give a top-level view
23 of how you'd select things and move them into an area. I think the -- I think
24 it's -- at this stage probably in the -- what is this, the 2004, 2003 time frame,
25 it was, it was known how to do the underlying program to do this. The
26

1 innovation is this is applied to user interface for an application I think that's
2 kind of separate and off to the side at this point. So this is just, if you will, a
3 tool for a user interface designer to go in and lay out the user interfaces
4 almost a bit independently of the underlying application. An example might
5 be -- well, one of the examples from our specification is the, the idea of a
6 shopping web application. Apparently the underlying code is fairly well-
7 known, how to implement a shopping cart, how to display products, things
8 like that, but the idea of you can design user interface using these tools
9 independently of that is kind of the crux here, I think. Figure 7, again, is
10 pretty much the idea of a laid-out view composition where the -- here's the
11 entire interface that the designer has, has designed for an application such as
12 a shopping program.

13 Now, I'll turn to the claim rejections, and if I could begin by
14 addressing Section 101 Rejection, and as I said before, the 101 Rejection
15 was added during a briefing by the Examiner. And if you can look at claim
16 1, the Preamble, you can see that essentially what claim 1 requires with
17 respect to this rejection is that there be a computer program product that
18 tangibly embodies, that tangibly embodies in a computer-readable medium.
19 Now, the plain meaning of these words which is one of the tenets of claim
20 construction is that the claim should be begin in the plain meaning of the
21 words unless it's inconsistent with the Specification. Now, as we said in our
22 Brief, tangibly means in a manner that's discernible to the touch or palpable,
23 and embodied means to give something body, to, to represent it in a material
24 form. So you put those things together, tangibly embodied, in a computer-
25 readable medium, and you've got something that's given bodily form, in this
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1 case, a computer program product, in a manner that's discernible to the touch
2 or material in a computer-readable medium.

3 Now the Examiner's gone and said well, that encompasses a signal.
4 And we disagree with that, and we think that his, his Rejection here is just
5 based on a misunderstanding of a portion of the Specification here. And you
6 can see on our Reply Brief at page 3 we've pulled in that, that portion of the
7 Specification he's talking about. And if you do a quick analysis of that,
8 you'll see that he's misunderstood the difference -- he's transported or he's
9 confused an information carrier, I think, with a computer-readable medium.
10 If you read that, that portion of the Specification that he cites, it gives two
11 examples of an information carrier. The first is a machine-readable storage
12 device and the second is a propagated signal. Now, the Examiner took that
13 example of a propagated signal as a form of information carrier and used it
14 to reject our claims, but the problem with that is our claims don't recite an
15 information character -- carrier, they recite a computer-readable medium,
16 and --

17 JUDGE BARRETT: Isn't a signal a medium? I mean, I think I -- let
18 me tell you where I'm coming from. I happen to agree with the Examiner
19 based on the reading of the Specification so far. In other words, this says
20 computer program tangibly embodied in an information carrier, for example,
21 a propagated signal. To me, your arguments about tangibly and embodied
22 don't carry much weight when you're saying in an example that is a
23 propagated signal.

24 MR. BROGAN: Well, I see your point, and I would call -- I would
25 say there's a difference between an information carrier and a computer
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1 readable medium in that one, the media -- well, the medium -- go back to
2 your original question. A signal is a type of medium, I'll agree with that. It
3 is not in the sense of this specification and the sense of one of ordinary skill
4 in the art computer-readable medium. One doesn't talk about reading signals
5 or writing signals. The computer may receive a signal, a computer may
6 transmit a signal, but one doesn't say, you know, like this computer's going
7 to read the signal. What does a computer read, it reads the type of media
8 that -- the other example that's given here, a medium like a machine-
9 readable storage device. So a computer can read a medium like a storage
10 device, it can write to a medium like a storage device, but another type of
11 medium like a signal is not something you'd read or write. So it's not a
12 computer-readable medium.

13 JUDGE BARRETT: You're reading the information is what's being
14 carried by the medium?

15 JUDGE HUGHES: We didn't chose the definition here. The, the
16 Appellants did and they're the ones who defined computer-readable media in
17 their specification.

18 JUDGE BARRETT: We often see claims that say embodiment,
19 tangible medium. That's different than tangibly embodied in a medium that
20 can be a signal. I'm just pointing that out, I mean that's -- we see that
21 distinction.

22 MR. BROGAN: I do see the distinction you're drawing. Personally,
23 I'd prefer a solid medium to really remove the confusion, but that's not at
24 issue here, so --

1 JUDGE BARRETT: I'm just saying that's where we're meeting right
2 now. We understand your point, though.

3 MR. BROGAN: And I understand your point, so I think -- I guess my
4 final point is I think a careful parsing, which is what we tried to present in
5 the Brief, leads to our conclusion, but it's a debatable point for sure.

6 JUDGE BARRETT: We will consider it again.

7 MR. BROGAN: Question?

8 JUDGE BARRETT: No.

9 MR. BROGAN: Oh, sorry. So I'll turn to the 103 rejections now.
10 Again, in the final op section, the Examiner rejected 1 through 3, 5 through
11 24, 20 through 31 in view of a combination of four references, Inanoria,
12 Pena, Pattison, and Mahemoff. If you look at the first element of claim 1
13 after the Preamble, I'm just going to read through it, "enabling the user to lay
14 out one or more views for user interface, including allowing the user to
15 select one or more user interface elements from a set of user interface
16 elements for each of the one or more views."

17 So the first point we made in that Brief is that none of the cited
18 references teach this element. And in -- as I explained at the beginning with
19 respect to the technology, laying out the views by including user interface
20 elements is a visual, interactive, graphical interaction with a, with a
21 computer program that's designed to lay out user interfaces. None of the
22 references show that kind of interface or element or ability to lay out. The
23 Examiner -- in the first part of the claim element, the Examiner applied the
24 Pattison reference. And Pattison shows a -- it's essentially a system to
25 display directed graphs in various manners with showing the connections
26

1 between them with different shapes, with different sizes. And the Examiner
2 points a part of Pattison that says well, here's the screen where you can,
3 where you can specify the layout of how those graphs are, are shown on the
4 screen. And he said so that corresponds to laying out one or more views, but
5 it's not laying out because you're not actually -- the user's not -- they're
6 actually allowed to arrange the elements or bring them in, take some out,
7 move some from one side or the other, something like that. All the user's
8 allowed to do there is select one of the predefined layouts as opposed to the -
9 - layout, the -- layout, and then change the way that already preconceived,
10 already fixed layout is displayed in the screen. For example, the nodes may
11 be shown as triangles, you can change that to show them as circles. So the
12 nodes may be shown in one color, you can change it to show another. So
13 that is not the same as, as laying out and designing a user interface from,
14 from the beginning as you can do in our system.

15 JUDGE BARRETT: Okay, let me sort of give you my position right
16 now. Looking at Inanoria, I think this reference is much better than
17 anybody's appreciated, including the Examiner. It specifically talks about
18 tools for creating a graphical user interface, creating a visual interface.
19 Paragraph 62 talks about this extensible user interface framework provides a
20 set up programming interfaces to be used to create GUI components using
21 this framework, provides a set of generalized tags or elements that can be
22 used to created and render GUI widgets. These GUI widgets can be buttons
23 and views and paintings and panels. Why isn't this being able to select user
24 interface elements? Why aren't those widgets user interface elements that
25 are selectable?

26

1 MR. BROGAN: Well -- okay.

2 JUDGE BARRETT: Well, I guess -- aren't they selectable when you
3 design a GUI interface?

4 MR. BROGAN: In -- yes, I would say in some sense they are
5 selectable. I won't argue that point. What I will argue is that what Inanoria
6 does it not -- does not allow a user to layout the one or more views in the
7 sense that we're talking about in our patent. Laying out is interactively,
8 visually moving things from one side to the other. For example, let's say
9 you wanted a scroll bar in your user interface screen, and in our system you
10 could bring in the user interface element for a scroll bar. And then the
11 designer decides well, I don't like it on the right side, I'm going to move it to
12 the left. He can go in and graphically grab that user interface element, move
13 it over to the left side of the view where it was positioned on the right
14 before, and now it's on the left. In Inanoria, what you need to do -- Inanoria
15 is all the things it says it is as you described, but it's really a system for
16 providing the code from a web server that goes to a web client, it gets
17 downloaded in typically xml or html code, that is then interpreted or
18 brought, or however you want to phrase it, by the browser to show the user
19 interface elements that we're talking about. So in Inanoria in order to
20 change, for example, one of the user interface elements, a scroll bar, from
21 the right side of the screen to the left side of the screen, it's not simply a
22 matter of, you know, an interface designer moving it from one side to the
23 other. It's a matter of going into the html code or the XML code, whatever
24 Inanoria downloads to the web client, and recoding that portion to, to move
25 it from the right side of the screen to the left side of the screen. It's not the
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1 same kind of visual system that allows -- and, again, I keep coming back to
2 layout. What we mean by layout is to visually be able to place user interface
3 elements in the view. In Inanoria to move an interface element, you have to
4 go in and recode that html that's going to get downloaded to the client.

5 JUDGE BARRETT: Could you explain where that is in the claims?

6 MR. BROGAN: Well, it's all encompassed in this first -- not all of it,
7 but a large part of it is encompassed in this first part enabling user to layout.
8 What does it mean by layout one or more views within the context of our
9 specification, and it's our position that layout is more than just being able to
10 do it. I mean, you know, if I, if I said -- if you said to, you know, someone
11 go lay out the design of the furniture in this room or the arrangement of the
12 furniture in this room, they wouldn't -- you wouldn't expect them to go and
13 write code. You'd expect them to go and maybe make models that could be
14 moved around or draw it on paper or something like that. Layout is a visual
15 term where you can interactively --

16 JUDGE BARRETT: You say you can't lay something out by using
17 code?

18 MR. BROGAN: I would say that would not be the common and plain
19 meaning of laying something out.

20 JUDGE BARRETT: It doesn't say that you lay it out by somehow
21 dragging with a mouse or visually laying out. If you look at Figure 8 of
22 Inanoria and it shows, for example, a scroll bar window on the left, a menu
23 at the top of this X-panel, buttons on the right. It had to have been laid out
24 somewhere in that arrangement by somebody. Even if they're embedded in
25 HTML code, somebody had to design that arrangement of components. I'm
26

1 just not sure if you're requiring a visual, interactive drag-and-drop type
2 interface that that's claimed or even disclosed. I mean the disclosure doesn't
3 really show how you would do it other than generally there's three views on
4 a page. It doesn't show about centering this view to the left, you know, how
5 you would keep it there while another view is put on the right. That's the
6 kind of problem I'm seeing.

7 MR. BROGAN: All right. Well, my answer is Figure 8 of Inanoria,
8 as you said, it is -- it shows an example of the interface as it would appear on
9 the client side. So what's happened at this point in Inanoria is I think the
10 web server with Inamorata's code has downloaded the html or the xml,
11 whatever is going to the client, who is then rendered these objects on the
12 screen. Again, in the sense of layout, it -- yeah, I see your point that it in a
13 broad sense --

14 JUDGE BARRETT: In other words, in Inanoria is --

15 MR. BROGAN: -- someone had to lay that out --

16 JUDGE BARRETT: -- right.

17 MR. BROGAN: -- at some point.

18 JUDGE BARRETT: And in Inanoria so it is both a development and
19 a run-time environment, so at development time, the user can select these
20 GUI components using this dui framework. And then at run time when the
21 client asks for a web page, it goes to this layout manager who gets a
22 template from a library and puts it in the right form, but somebody laid that
23 form out ahead of time.

24 MR. BROGAN: Right.

25

26

1 JUDGE BARRETT: And -- so maybe I wasn't getting -- so that's how
2 I'm looking at that reference.

3 MR. BROGAN: Yeah, I see your point, but, again, the claim
4 language, going back to that for a sec, enabling user to lay out one or more
5 views, I mean when you're -- again, that claim language is meant to, to
6 invoke the idea of visually laying out a view. Whereas, in Inanoria, you're
7 correct, someone had to lay out that the scroll bar is on the left, scroll bar is
8 on the bottom, etc., but they did it by coding it. They didn't lay out a view,
9 they coded some code.

10 JUDGE BARRETT: Or they picked a component -- I mean I think it
11 does talk about screens are created by putting together containers in GUI
12 components to be used by the layout manager. It is done by creating a
13 document definition using a -- some sort of language. So I think it does talk
14 in a broad sense of laying out. In terms of your arguments in your Brief, you
15 talk about at page 18 rather than using development technologies to enable a
16 user to lay out more and more views, discloses dui technologies to create
17 declarative formatted GUI components. But I think Inanoria is a
18 development technology as well as a run-time technology, and I guess I
19 wasn't seeing your arguments about using tags, how that would be excluded
20 by the claim language.

21 MR. BROGAN: I think there is -- in the Brief, it didn't come out as
22 clearly as I would have liked. There's two kind of arguments going on there
23 that are easy to confuse, and I think the Examiner confused it in his reply,
24 and, and honestly reading it myself, I think they are intermixed to some
25 extent as well. Before I get to that, though, you said -- you quoted one thing
26

1 about bringing in XUI. GUI, GUI components or user interface components
2 from Inanoria.

3 JUDGE BARRETT: Yes.

4 MR. BROGAN: And, again, I would just point out that those are
5 pieces of code. It's a code library that says, you know, here's a scroll bar
6 code, bring it in and bring in the Window code or bring it in and that's what's
7 going to get downloaded. So it's not something that a user can, again, within
8 the definition we're trying to propound here, lay out a view.

9 So that leads right into the other argument that you just brought up,
10 and that is more based on the idea that Inanoria teaches away from the
11 combination with at least two of the other references. And that is because if
12 you read Inanoria carefully, whether you call it development technologies, I
13 think we called it declarative approach kind of as a shorthand for what I was
14 talking about, and Inanoria itself often calls it lightweight, language is
15 lightweight development technologies. And the idea there is Inanoria is
16 saying okay, if I'm a web application, I'm up on the web and I've got a client
17 down here, there's -- essentially, he kind of divides the world into two.
18 There's a lightweight way to provide a code that can create the interface in
19 that web browser and the client, and there's a heavyweight way. The
20 lightweight way is using something like XML, some market language,
21 XML, HTML, probably expanded or extended the way Inanoria describes to
22 get to these extra functionalities like some of the oh, -- oriented
23 functionalities that they want to add to it. And Inanoria says in several
24 places, maybe a dozen places, that's the best way to do it, that's a great way
25 to do it. Why? Because in the heavyweight technologies, for example, Java,
26

1 you're going to be downloading applets or Java code itself, maybe C++ code,
2 some other little executables into a web browser that are going to run. In the
3 Java applet example, you're going to need a Java machine, uses up
4 resources, uses up time. There's a lot of security risk with downloading Java
5 applets. So Inanoria goes out of its way to say lightweight technologies is
6 what you should be using for these kind of user interfaces and heavyweight
7 technologies are not.

8 Now, in our Brief, we call that declarative and nondeclarative. It's
9 just another way to label it. The problem with that is you could take that on
10 its face that say, that saying you shouldn't be combining the teachings of
11 Inanoria with a heavyweight technology reference. In --

12 JUDGE BARRETT: But we don't need that, right? We don't need to
13 combine Inanoria because it teaches this limitation.

14 MR. BROGAN: Well, I had a great --

15 JUDGE BARRETT: -- none of the four references --

16 MR. BROGAN: -- I had a great place to go with that and you -- if
17 you -- well, I can --

18 JUDGE BARRETT: Like I said, I think --

19 MR. BROGAN: -- summarize that so you couldn't come out of it
20 with two, at least two of the other references that teach heavyweight, and
21 we're now going the other way.

22 JUDGE BARRETT: In other words, I think the reference is much
23 better than the Examiner gives it credit for.

24 MR. BROGAN: You think -- you know, it sounds like you think
25 Inanoria is a 102.

26

1 JUDGE BARRETT: It's very close, as broadly claimed I should say.

2 MR. BROGAN: Yeah. So I'm going to have to fall back again then
3 on the -- well, let me fall back on one other thing. So if I look at the claim
4 as a whole, so I've got this idea of my first element is enabling user layout
5 views and user interface, selecting the elements, bringing them in, and, and
6 in our interpretation in light of the spec is that that's a visual interactive
7 thing. And then the next step of the claim is about putting that -- putting
8 several views into a view composition. It's kind of illustrated, if you would,
9 in Figure 3 or Figure 7.

10 JUDGE BARRETT: Where, where is that argument? As I
11 understood the Brief, it was arguing just that first limitation.

12 MR. BROGAN: Yeah, well, at some point in the Brief, it says the
13 claimed -- the body of art as a whole did not teach the claim as a whole.
14 And I can perhaps cite you to that.

15 JUDGE BARRETT: But that's not a specific argument and it doesn't
16 each these other limitation.

17 MR. BROGAN: Yeah, that is not a fact as I was about to say. I was
18 just -- my argument was just that, the as-whole argument. So if you look at
19 our claim as a whole, it's the idea of an interactive, visual user interface
20 development tool that you can interactively graphically move things around,
21 and then store them in the repository, and then hook that up with an
22 application and that becomes user interface for the application. And I think
23 that's just lacking from Inanoria and all the other references, that idea as a
24 whole. Even if you combined them all, the idea of a whole of let's have a
25 separate graphical tool that just designs user interfaces so we can lay out the,
26

1 the scroll bars and the buttons and the push button, and, you know, anything
2 else you'd see in a user interface, and not have to worry about what else is
3 going on and just store that and then hook it up to use it later. It's just not
4 present in Inanoria or any of the references as a whole.

5 JUDGE BARRETT: Or in the claim as I understand it. I don't see
6 graphical user layouts -- drop anything --

7 MR. BROGAN: I think that's -- yeah, it's supposed to be
8 encompassed in that --

9 JUDGE BARRETT: In the layout.

10 MR. BROGAN: -- the term layout of one or more views, I think. It's
11 supposed to encompass that.

12 JUDGE BARRETT: Okay. You have any questions?

13 JUDGE HUGHES: No.

14 JUDGE BARRETT: Thank you very much.

15 MR. BROGAN: Thank you and --

16 JUDGE BARRETT: Let's see if we have any questions about the
17 terms.

18 COURT REPORTER: Yeah, could you spell the three separate
19 names that you referred to --

20 JUDGE BARRETT: Just one of them, Inanoria.

21 MR. BROGAN: Oh, yeah. Okay, GUI is G U I.

22 COURT REPORTER: And Inanoria is with a an I, I think?

23 MR. BROGAN: Yeah.

24 JUDGE BARRETT: Pattison is P A T T I S O N.

25 Whereupon, the proceedings, at 2:21 p.m., were concluded.

26